

**ARKANSAS NATURAL RESOURCES COMMISSION RULES GOVERNING  
WATER DEVELOPMENT PROJECT COMPLIANCE  
WITH THE ARKANSAS WATER PLAN  
(2007)**

*TITLE VI*  
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*TITLE VI*

SUBTITLE I. GENERAL

Section 601.1 APPLICABILITY.

The term "project" as used in this title shall include the following projects:

- A. Projects that involve the development of a new water supply source.
- B. Projects that utilize a new or different place of withdrawal.
- C. Projects that increase water treatment plant capacity.
- D. Projects involving system expansion that would result in an aggregate increase of existing and additional water demand being greater than 80 per cent of existing water treatment capacity.
- E. Projects involving an expansion that would result in an increase of more than 20 per cent of the current average water usage.
- F. Projects involving flood control or drainage.
- G. Projects that would serve areas that are being served by other entities or projects that would serve areas on which other projects have, or have applied for, water plan certification.
- H. Master Plans providing the information requested in section 602.

Section 601.2 EXEMPTION.

The following projects are exempt for Water Plan compliance review:

- A. Local drainage facilities for recreational developments of less than five acres.
- B. Drainage facilities associated with street construction or improvements.
- C. Installation of new water services from existing mains.
- D. Any project in which game protection funds, or federal or state outdoor recreation assistance grant funds, are to be spent provided such project will not diminish the benefits of any existing water development project.
- E. Projects that do not meet the applicability requirements of Section 601.1.

## SUBTITLE II. APPLICATION

### Section 602.1. APPLICATION PROCEDURE.

All applications for approval of a project pursuant to Arkansas Code Annotated §15-22-503(e) shall be in writing and signed by a representative of the applicant. The application shall contain the following:

- A. Full name, address and telephone and fax number of the applicant.
- B. Name of applicant's representative.
- C. Common name of the project printed in boldface capital letters.
- D. The name, address and telephone and fax number of applicant's consulting engineer.
- E. The name, address and telephone and fax number of applicant's attorney, if the applicant has an attorney.
- F. Anticipated date of commencement of operation of the project.
- G. List of all applications made to federal, state or local agencies for approval of the project or any portion thereof, and the action taken by said agencies.
- H. Political sub-division, agency, board or commission which will have responsibility for constructing, operating, managing or maintaining the project improvements. If more than one, then identify the responsibility of each.

### Section 602.2. PRELIMINARY ENGINEERING REPORT.

The application shall be accompanied by a preliminary survey and report or, if none, the application shall so state. The report shall contain the following:

- A. Location of the project.
- B. Source of water for the project.
- C. Applicant's water source on the date of the application.
- D. Summary description of the project.
- E. Purpose of the project.
- F. Benefits expected to result from completion of construction of the project.
- G. General nature of improvements, facilities, dams, structures, pipelines, and other works constituting the project.
- H. Necessity for the project.
- I. Feasibility of the project.
- J. Estimated cost of the project.
- K. Anticipated date of commencement of construction of the project, including dates of any phases of construction.

Section 602.3. GEOGRAPHIC SERVICE AREA.

The applicant may include in its application a United States Geological Survey 7.5-minute quadrangle map, a similarly scaled map, or an electronic map file delineating the geographic area to be served by the project.

Section 602.4. FILING.

The original application shall be filed with the Executive Director of the Commission.

Section 602.5 ALTERNATIVE FILING - STATE CLEARINGHOUSE.

The filing of an application under the State of Arkansas Project Notification and Review System (APNRS) may be accepted in lieu of a filing under Section 602.1 of these rules, if APNRS filing contains information contained in Section 602.1 and is accompanied by a preliminary survey and report as required in Section 602.2.

Section 602.6. ALTERNATIVE FILING-OTHER COMMISSION PROGRAMS

The filing of an application under the Commission's Administrative "Rules And Regulations To Obtain Financial Assistance", "Rules For Utilization of Surface Water" or "Rules and Regulations Governing The Arkansas Dam Safety Program" may be accepted in lieu of a filing under Section 602.1 of these rules, if the application contains information requested in Section 602.1 and is accompanied by a preliminary survey and report as required in Section 602.2.

Section 602.7. NOTIFICATION OF NEARBY PUBLIC WATER SYSTEMS.

- A. When a project or portion of a project may physically or economically affect public water systems within five (5) miles of any portion of the proposed project, the Applicant shall notify all public water systems within five (5) miles of the project area by certified mail or personal delivery. The notification shall consist of the application submitted to the Executive Director, along with all attachments thereto.
- B. The notification shall be at least ten (10) days prior to the hearing required by Subtitle IV of these regulations.
- C. Prior to compliance determination, the Applicant shall certify to the Referee that either:
  - (1) there are no public water systems for which notification is required, or
  - (2) notification was given to named systems as required by this section. The applicant may be required to submit additional information such as the domestic return receipt, affidavit, or other proof of notice.

### SUBTITLE III. FEES, RECEIPT AND REVIEW

#### Section 603.1. FEES.

An application fee of \$200.00 will be collected on projects that require Water Plan compliance certification.

#### Section 603.2. APPLICATION RECEIPT.

At the time of filing, the Commission staff shall record on the application the date it is filed with the Executive Director. The filing date shall be the date of the application.

#### Section 603.3. COMMISSION STAFF REVIEW.

After filing, the Commission staff shall review the application to ascertain the accuracy of the data contained in the application. After completing its review, the Commission staff shall recommend the approval or disapproval of the application, and shall state reasons for its recommendation in writing.

### SUBTITLE IV. COMPLIANCE DETERMINATION

#### Section 604.1. PROCEDURE GENERALLY.

The approval or disapproval of the application shall constitute an adjudication under the Arkansas Administrative Procedure Act. All action taken and all hearings conducted on the question of approval of the application shall be in compliance with the Arkansas Administrative Procedure Act. The Commission shall pay the costs of recording such hearings, and shall furnish a transcript of the record thereof in the event of judicial review of any such hearing.

#### Section 604.2. REFEREE.

The Executive Director of the Commission is designated as a Referee, or he may appoint a Commission staff designate, to preside at hearings on applications and shall have the powers granted presiding officers by the Arkansas Administrative Procedure Act.

#### Section 604.3. NOTICE-PUBLICATION.

The Executive Director shall give the applicant and any other party who has requested notice, ten (10) days notice of the hearing on the application. The Executive Director shall also publish notice of the hearing in a newspaper as required by Ark. Code Ann. §15-22-206. The Commission shall pay the cost of giving and publishing notice.

#### Section 604.4. NOTICE OF HEARING CONTENTS.

Notice of the hearing on the application shall state:

- A. Time and place of the hearing.

- B. Name of hearing officer.
- C. Nature of the hearing.
- D. Matters to be considered at hearing.
- E. The Commission staff's recommendation and reasons therefore.
- F. Matters of fact and law asserted.
- G. Legal authority under which the hearing will be held.
- H. A statement that all interested persons will be given an opportunity to respond to the application or to the Commission staff's recommendation and to appear at the hearing in person or by counsel and present evidence and oral and written argument.

#### Section 604.5. COMPLIANCE CRITERIA.

The Referee shall not approve any application unless he determines that (a) the project complies with and implements the goals and objectives of the Arkansas Water Plan; and (b) the project adequately coordinates the use of water resources within the region in which the project is located, and within the state as a whole.

#### Section 604.6. INCORPORATION INTO ARKANSAS WATER PLAN.

Upon approval of the application, the project shall constitute an amendment of the Arkansas Water Plan, and the Arkansas Water Plan shall be deemed amended accordingly.

#### Section 604.7. REFEREE'S DECISION AND RECONSIDERATION.

The Referee may approve all or part of an application. An applicant may refile at any time any application, or part thereof, which has been disapproved if the Executive Director determines that circumstances surrounding the original disapproval have significantly changed to allow reconsideration.

#### Section 604.8. NOTICE OF REFEREE'S DECISION.

A copy of the referee's decision shall be provided to the applicant and to any aggrieved party so requesting.

### SUBTITLE V. MASTER PLANS

#### Section 605.1. PROCEDURES GENERALLY.

- A. Master Plans will be reviewed in the same manner as other projects.
- B. Master Plans shall be submitted in the same form as applications for approval of other projects.
- C. Master Plans must additionally specify a time-frame the applicant plans to construct each phase of the proposed project.
- D. Master Plans may be approved for a period of ten (10) years following the date of the Final Determination.

Section 605.2. COMPLIANCE DETERMINATION.

- A. Final Determination on a Master Plan provides the applicant with the presumption that it will construct the projects as set out in the Master Plan during the specified time-frame, to the exclusion of other water providers.
- B. Upon notice to the applicant and opportunity for hearing, the Commission may reconsider the Final Determination of a Master Plan when sufficient progress toward implementing the projects described in the Master Plan has not been made.

Section 605.3. ADDITIONAL REPORTING REQUIREMENTS.

- A. As each project listed in a Master Plan is developed for construction, the applicant shall notify the Commission.
- B. If the scope of work represents a significant departure from the Master Plan, the project shall be submitted as a separate project for review.

SUBTITLE VI. REVIEW OF DECISION

Section 606.1. REQUEST FOR REVIEW BY COMMISSION.

Any decision of the Referee may be reviewed by the Commission pursuant to the procedure(s) set out in Title I, Subtitle V of the Commission's Rules of Organization and General Operations.

SUBTITLE VII. SERVICE AREA TRANSFERS

Section 607.1. PROTECTION OF SERVICE AREAS.

It is unlawful for a person to provide water or wastewater services to an area where such services are being provided by the current provider that has pledged or uses revenue derived from services within the area to repay financial assistance provided by the Commission, unless approval for such activity has been given by the Commission and the new provider has received approval under the Arkansas Water Plan, Ark. Code Ann. § 15-22-503, if applicable.

Section 607.2. COMMISSION APPROVAL.

- A. As a condition of its approval, the Commission may require the payment of an equitable portion of the outstanding financial assistance provided.
- B. Any payment made shall reduce the outstanding balance of the financial assistance provided by the Commission to the current provider.

Section 607.3. APPROVAL PROCESS.

Upon agreement of the providers exchanging territory, the providers shall submit a written proposal to the Executive Director of the Commission for consideration.

- A. The proposal may be made part of an application for project approval under the Arkansas Water Plan.
- B. The Executive Director will determine whether the impact of the exchange is sufficient to warrant payment of an equitable portion of the current provider's outstanding financial assistance.
- C. If the Executive Director determines that payment is required, the following factors shall be considered in determining the sufficiency of the payment:
  1. The impact of the transfer of the area on the current provider's existing indebtedness and its ability to repay the debt.
  2. The value, including depreciation, of the current provider's facilities in the area to be transferred.
  3. The amount of any expenditures by the current provider for planning, design, or construction of service facilities outside the area that are directly and reasonably allocable to the area to be transferred.
  4. Any demonstrated impairment of service or increase in cost to consumers of the current provider remaining after the transfer of the area.
  5. The impact of future lost revenues from the current provider's existing consumers in the area to be transferred, but only until the indebtedness is retired.
  6. Necessary and reasonable legal expenses and professional fees.
  7. Other relevant factors as determined by the Commission.